REMARKS

I. Status of the claims

Applicants hereby provisionally elect Group I, claims 1-21, 22-25, 26-30, 37-38, and 39-41, for examination with traverse.

Claims 1-4, 7-14, 16-19, 21, 26-53 are pending. Claims 5-6, 11, 15, 20, 22-25 are canceled without prejudice or disclaimer. Applicants reserve the right to file one or more continuing applications to the canceled subject matter. Claims 31-36 and 42-44 are withdrawn. Claims 1-3, 7, 9-13, 16-19, 26, and 37, 38 are amended, claims 31, 36 and 44 are withdrawn and amended for grammatical reasons. Claims 45-53 are added. The amendments are fully supported by the specification. Please see the following table which identifies explicit basis in the specification for the amendments and the new claims. Applicants assert that new claims 45-53 comport with the subject matter of Applicants' elected Group I and therefore should be examined alongside the originally restricted set of claims.

Claim	Basis in the application as filed
1	- original claims 1 and 15; - page 38, line 26 and page 38, line 28 for the range more than 10% and up to 95%; - page 15, line 3 for the reference to 80% homology; - page 40, line 4 to page 41, line 12 which refers to both heterologous coding sequences and natural coding sequences and hence provides basis for referring to the endogenous promoters being linked to coding sequences in general; and - original claims 31 and 32 and page 5, lines 8 to 20 and page 6, lines 21 to 23 which all indicate that the constructs of the invention may be used in mammalian cells and hence inherently for the constructs to function in such cells the endogenous promoters must be capable of expression in mammalian cells.
9	page 40, line 4 to page 41, line 12
18	page 53, lines 6 to 25
21	page 24, lines 24 to 26, page 40, lines 4 to 9 and page 41, lines 5 to 9
37	- original claims 1 and 15; - page 38, line 26 and page 38, line 28 for the range more than 10% and up to 95%; - page 15, line 3 for the reference to 80% homology; - page 40, line 4 to page 41, line 12 which refers to both heterologous coding sequences and natural coding sequences and hence provides basis for referring to the endogenous promoters being linked to coding sequences in general; and - original claims 31 and 32 and page 5, lines 8 to 20 and page 6, lines 21 to 23 which all indicate that the constructs of the invention may be used in mammalian cells and hence inherently for the constructs to function in such cells the endogenous promoters must be capable of expression in mammalian cells.
38	page 41, lines 15 to 20

New 45	page 35, lines 24 and 25 and page 41, lines 17 and 18
New 46	page 41, lines 21 to 26
New 47	page 41, lines 21 to 26
New 48	page 38, line 26 and page 38, line 28
New 49	page 38, line 27 and page 38, line 28
New 50	page 40, lines 4 to 9 and page 41, lines 5 to 9
New 51	page 23, lines 9 to 14 and page 15, line 3
New 52	page 25, line 9
New 53	page 25, line 9

II. Further restrictions and species elections

Examiner Chen also subjects this Group to restriction with respect to (i) DNA virus or RNA virus (claim 5); (ii) herpes virus or AAV (claim 6); (iii) HSV or CMV or EBV (claim 7); (iv) HSV-1 or HSV-2 (claim 8). See page 3 of the restriction.

Accordingly, Applicants elect: (i) DNA virus (claim 5); (ii) herpes virus (claim 6); (iii) HSV (claim 7); and (iv) HSV-2 (claim 8). With respect to HSV-1 and HSV-2, Applicants respectfully submit that they should not have to restrict claim 8 to cover only one of the two *subspecies* of HSV. Both subspecies of HSV are similar and would not impose any undue search burden on the Examiner. Applicants' invention applies equally to both virus subtypes.

At page 5, Examiner Chen requires Applicants to pick one species of promoter from claim 9 and one species from the recited expression regulatory units from claim 11. In this regard, Applicants thank Examiner Chen for speaking with their representative on February 15, 2007, to discuss this species election. The undersigned explained that one aspect of Applicants' invention is to immunize a subject against a virus by delivering a viral construct into the subject. The viral construct comprises selected fragments from a particular virus genome and, as such, those fragments necessarily contain certain genes, promoters, and regulatory elements that reside in their native genomic context. Thus, a viral genomic fragment may contain multiple native genes and therefore it would necessarily contain multiple native promoters that are naturally linked to their respective genes.

One key aspect of the invention, therefore, is a genomic viral fragment that comprises at least two endogenous promoters for driving expression of their respective

coding sequences. The presence of at least two endogenous promoters is a feature of all of the original claims. Thus, Applicants respectfully assert for the record that the claimed invention requires two promoters and Applicants make a species election solely to assist the Examiner in his preliminary searches of the claimed invention. Applicants do not hereby in any way limit the claimed invention to only the one elected promoter species. Accordingly, in this light, Applicants elect species ICP0 from claim 9. Applicants understand that upon finding an allowable subject matter, Examiner Chen is obliged to examine the other species recited in claim 9. To ensure this response is fully compliant, Applicants therefore

Since claim 11 is canceled, the species election of that claim is moot.

* * *

CONCLUSION

Applicants invite Examiner Chen to contact the undersigned if he feels that a telephone discussion would help expedite prosecution.

Respectfully submitted,

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